

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE
PRODUCTS ANTITRUST LITIGATION

Case No. 10-MD-02143-RS
MDL No. 2143

This document relates to: ALL INDIRECT PURCHASER ACTIONS

**[PROPOSED] ORDER GRANTING
ERWIN'S MOTION FOR ATTORNEY'S
FEES AND INCENTIVE AWARD**

1 This matter comes before the Court on objecting class member Conner Erwin's Motion for
 2 Attorneys' Fees and Incentive Award. After review of all submissions in support of and in opposition
 3 to the motion, the motion is hereby GRANTED.

4 The Court finds that Erwin's participation in the proceedings through his objections and
 5 appeals to the Ninth Circuit conferred a material benefit through an increase to the common fund by
 6 \$21.8 million. The Court also finds that Erwin assisted in providing an adversarial presentation into the
 7 proceedings and created a direct benefit for the class members who will now receive increased
 8 payments from the settlements' common fund. As such, the Erwin is entitled to attorneys' fees and
 9 costs. *See e.g., Rodriguez v. Disner*, 688 F.3d 645, 658-59 (9th Cir. 2012).

10 Erwin does not seek expenses, but requests fees in the amount of \$1,524,180. Under the
 11 percentage of recovery method of calculating fees, the requested \$1,524,180 is approximately 7% of the
 12 \$21.8 million increase to the common fund. 7% is less than a third of the presumptive 25% benchmark
 13 and amounts to a "modest" request. *In re Southwest Airlines Voucher Litig.*, 898 F.3d 740, 746 (7th Cir.
 14 2018) (characterizing 10% request of the market value of the benefit as "modest").

15 The Court has considered the *Vizcaino* factors and finds that in light of those factors, the 7%
 16 fee award is reasonable. Erwin's counsel has demonstrated great skill and efficiency and assisted in
 17 increasing the common fund by nearly the total amount of the round 3 settlements. Erwin's counsel
 18 have expended five years on this complex case and incurred a great risk of non-payment. The Court has
 19 considered the lodestar merely as a crosscheck and finds that Erwin's counsel incurred a reasonable
 20 lodestar of \$508,650 after substantial deductions in time which they voluntarily made. Awards in similar
 21 cases further support the award. *See e.g., Southwest; Dewey v. Volkswagen*, 909 F. Supp. 2d 373, 396 (D.N.J.
 22 2012). The award of \$1,524,180 represents a 2.9 multiplier on the lodestar amount of objector's
 23 counsel, which is within the approved range of reasonableness in this Circuit. *See Vizcaino v. Microsoft*
 24 *Corp.*, 290 F.3d 1043, 1051 & n.6 (9th Cir. 2002) (finding 1.0-4.0 to be generally the "range of
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1 multipliers applied in common fund cases"). It is especially reasonable given the substantially greater
2 risk objectors face of non-payment after a district court rejects an objection, given that the majority of
3 time is spent on appellate matters with a low chance of success. The Court further finds that Erwin is
4 entitled to an incentive award, and that \$1,500 is a reasonable award.

5 The Court is persuaded that the awards should be paid out of class counsel's fee fund. The
6 Court finds this to be supported by precedent and an equitable way of ensuring that the class is not
7 charged twice when the same result could have been more efficiently achieved. *See Hendricks v. Starkist*
8 *Co.*, 2016 U.S. Dist. LEXIS 134872, 2016 WL 5462423, at *16 (N.D. Cal. Sept. 29, 2016), *aff'd sub. nom*
9 *Hendricks v. Ference*, 754 Fed. Appx. 510, 513 n.1 (9th Cir. 2018); *Hendricks v. Starkist Co.*, 2016 U.S. Dist.
10 LEXIS 134872, 2016 WL 5462423, at *16 (N.D. Cal. Sept. 29, 2016); *see also In re Sony PS3 "Other OS"*
11 *Litigation*, No. 10-cv-01811-YGR, 2018 WL 2763337, at *3 (N.D. Cal. Jun. 8, 2018) (ordering objectors'
12 fees paid from class counsel's fee award).

14 Accordingly, for the reasons provided above, Erwin's motion is GRANTED. The Court awards
15 Erwin an incentive award of \$1,500 and attorneys' fees in the amount of \$1,524,180, payable from the
16 fee award to class counsel.

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18 IT IS SO ORDERED.

19 DATED: _____

20 _____
21 HONORABLE JUDGE RICHARD
22 SEEBOORG, UNITED STATES
23 DISTRICT JUDGE
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